

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

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In re:	: : : : :
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,	: PROMESA : Title III : : :
as representative of	: Case No. 17-BK-3283 (LTS) : :
THE COMMONWEALTH OF PUERTO RICO <i>et al.</i> ,	: (Jointly Administered) : :
Debtors. ¹	: : :
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In re:	: : : : :
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,	: PROMESA : Title III : : :
as representative of	: Case No. 17-BK-3566 (LTS) : :
THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO,	: : : : :
Debtor.	: : :
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¹ The Debtors in these Title III cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566(LTS)) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808), (iv) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474), and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780) (Last Four Digits of Federal Tax ID: 3747).

**MOTION OF RETIREE COMMITTEE ESTABLISHING INITIAL PROCEDURES
WITH RESPECT TO OBJECTIONS OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS AND OFFICIAL COMMITTEE OF RETIRED
EMPLOYEES, PURSUANT TO BANKRUPTCY CODE SECTION 502 AND
BANKRUPTCY RULE 3007 TO CLAIMS ASSERTED BY HOLDERS
OF BONDS ISSUED BY EMPLOYEES RETIREMENT SYSTEM
OF GOVERNMENT OF PUERTO RICO**

To the Honorable United States District Judge Laura Taylor Swain:

The Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “Retiree Committee”), hereby files this motion (the “Motion”) seeking the entry of an order substantially in the form attach hereto as Exhibit A setting forth initial notice and participation procedures to govern the claim objections filed by the Retiree Committee and the Official Committee of Unsecured Creditors (the “UCC” and together with the Retiree Committee, the “Objectors”) regarding claims filed against either ERS or the Commonwealth and based on the issuance of bonds by ERS in 2008. In support of this Motion, the Retiree Committee respectfully states as follows:

FACTUAL BACKGROUND

1. On March 12, 2019, the UCC filed its *Omnibus Objection of Official Committee of Unsecured Creditors to Claims Asserted by Holders of Bonds Issued by Employees Retirement System of Government of Puerto Rico* [Case No. 17-3566; Docket No. 381] and its *Omnibus Objection of Official Committee of Unsecured Creditors to Claims Asserted by Oaktree Funds That Hold Bonds Issued by Employees Retirement System of Government of Puerto Rico* [Case No. 17-3566; Docket No. 5586] (together, the “UCC ERS Claim Objections”).

2. The UCC ERS Claim Objections sought the disallowance of all claims asserted against ERS based on the approximately \$3.1 billion of outstanding bonds issued by ERS in 2008 (the “ERS Bonds,” and the holders of such bonds, the “ERS Bondholders”). The UCC sought the disallowance of all of such claims on the grounds that the ERS Bonds were issued *ultra vires* and

thus are null and void and that the ERS Bondholders have no remedy against ERS. The UCC ERS Claim Objections do not challenge proofs of claim filed against the Commonwealth based on the ERS Bonds.

3. On March 12, 2019 the UCC filed the *Motion of Official Committee of Unsecured Creditors, Under Bankruptcy Code Sections 105(a) and 502 and Bankruptcy Rule 3007, Establishing Procedures with Respect to Objections to Claims Asserted by Holders of Bonds Issued by Employees Retirement System of Government of Puerto Rico and Requesting Related Relief* dated March 12, 2019 [Case No. 17-03283-LTS; Docket No. 5589] (the “UCC Claim Objection Procedures Motion”), which sought an order establishing notice and litigation procedures for the UCC’s ERS Claim Objection (the “Original ERS Claim Objection Procedures Order”) and were based largely on the notice and litigation procedures initially approved by the Court with respect to the Commonwealth’s general obligation bonds [Case No. 17-03283-LTS; Docket No. 5143].

4. On April 23, 2019, the Retiree Committee filed its *Omnibus Objection of the Official Committee of Retired Employees of the Commonwealth of Puerto Rico, Pursuant to Bankruptcy Code Section 502 and Bankruptcy Rule 3007, to Claims Filed or Asserted by Holders of ERS Bonds Against ERS and the Commonwealth* [Case No. 17-3283; Docket No. 6482; Case No. 17-bk-3566, Dkt. 469] (the “Retiree Committee’s Claim Objection” and together with the UCC ERS Claim Objections, the “Objections”).

5. The Retiree Committee’s Claim Objection seeks the disallowance of all ERS Bond-based claims asserted against the Commonwealth and/or ERS, including on the grounds that the ERS Bonds were issued *ultra vires*. The Retiree Committee’s Claim Objection also seeks the disallowance of ERS Bond claims to the extent they allege collateral other than employer

contributions held by ERS as of the petition date. Additionally, the Retiree Committee's Claim Objection seeks the disallowance of any ERS Bond-related claims filed against the Commonwealth.

6. On June 10, 2019, the UCC filed the *Informative Motion of Official Committee of Unsecured Creditors Regarding Its March 12, 2019 Motion [Docket No. 5589] Establishing Procedures with Respect to Objections to Claims Asserted by Holders of Bonds Issued by Employees Retirement System of Government of Puerto Rico and Requesting Related Relief* [Case No. 17-bk-3283, Dkt. 7352; Case No. 17-bk-3566, Dkt. 551]. In that Informative Motion, the UCC proposed certain changes (the "UCC Revised ERS Claim Objection Procedures Order") to the ERS Claim Objection Procedures Order, including having the procedures order govern the UCC and Retiree Committee's objection to ERS Bond claims filed against ERS. The UCC Revised ERS Claim Objection Procedures Order did not include the Retiree Committee's objection to ERS Bond claims filed against the Commonwealth.

7. At the June 12, 2019 Omnibus Hearing the Court continued consideration of the UCC Revised Claim Objection Procedures Order to the July 24, 2019 Omnibus Hearing.

REQUESTED RELIEF

8. By this Motion, the Retiree Committee seeks approval of the proposed procedures attached as Exhibit A, which are identical to the UCC Revised Claim Objection Procedures except that the Retiree Committee's proposed procedures would apply both to the Retiree Committee's objection to ERS Bond claims filed against the Commonwealth as well as the Retiree Committee and UCC's objections to ERS Bond claims filed against ERS.

9. The Retiree Committee believes that it is in everyone's interest that the initial notice and participation procedures that will govern the claim objections over the ERS Bonds apply to all

ERS Bond claims that have been asserted against both ERS and the Commonwealth. The Retiree Committee's proposed procedures (just like the UCC's) does not purport to deal substantively with how the resolution of these claims will be litigated. The proposed procedures do not set a briefing or discovery schedule—they simply provide a means by which to give holders of ERS bonds notice of the claim objections, and provide them with an opportunity to participate in that process, whatever that process ultimately may be. In short, the proposed procedures simply seek to bring all interested parties to the table so that decisions collectively can be made about how best to move forward.

10. Based on discussions with counsel for certain ERS Bondholders the Retiree Committee is aware of two objections to the requested relief. The first is that certain of the Retiree Committee's objections to the claims are already subject to litigation before this Court. The second is that the ERS Bond-related claims against the Commonwealth are based at least partially on legal theories not present in the claims asserted against ERS.

11. These concerns are, at best, premature. Again, nothing in the proposed procedures requires that all ERS Bond-related claims be litigation the same way at the same time on the same schedule. Instead, it provides a forum by which interested parties can work together to come up with the most efficient process to litigation these claims. With that said, the Retiree Committee has informed the concerned bondholders that while it expects the *ultra vires* dispute to be handled at one time as to both claims against the Commonwealth and ERS, the Retiree Committee will agree that: (a) all other issues governing the Retiree Committee's objections to ERS Bond claims filed against the Commonwealth will proceed independently; and (b) the Retiree Committee's other objections to claims filed against ERS will be held in abeyance until this Court's resolution of the relevant adversary proceedings currently pending and the expected appeal to the Court's

552 ruling are resolved, provided that all claimants will be bound by the Court's decisions. The Retiree Committee is still in discussions with the bondholders and the UCC in order to reach an agreement and present an agreed upon initial notice procedures to govern the UCC's ERS Claim Objections and the Retiree Committee's Claim Objections.

WHEREFORE, the Committee respectfully requests that the Court enter an Order substantially in the form of the attached Exhibit A.

Dated: July 2, 2019

Respectfully submitted,

JENNER & BLOCK LLP

BENNAZAR, GARCÍA & MILIÁN, C.S.P.

By:

/s/ Robert Gordon

Robert Gordon (admitted *pro hac vice*)
Richard Levin (admitted *pro hac vice*)
919 Third Ave
New York, NY 10022-3908
rgordon@jenner.com
rlevin@jenner.com
212-891-1600 (telephone)
212-891-1699 (facsimile)

Catherine Steege (admitted *pro hac vice*)
Melissa Root (admitted *pro hac vice*)
Landon Raiford (admitted *pro hac vice*)
353 N. Clark Street
Chicago, IL 60654
csteege@jenner.com
mroot@jenner.com
lraiford@jenner.com
312-222-9350 (telephone)
312-239-5199 (facsimile)

By: /s/ A.J. Bennazar-Zequeira

A.J. Bennazar-Zequeira
Héctor M. Mayol Kauffmann
Francisco del Castillo Orozco
Edificio Union Plaza,
1701 Avenida Ponce de León #416
Hato Rey, San Juan
Puerto Rico 00918
ajb@bennazar.org
hector.mayol@bennazar.com
787-754-9191 (telephone)
787-764-3101 (facsimile)

Counsel for The Official Committee of Retired Employees of Puerto Rico